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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,571	09/01/2000	Horst Berneth	LEA 32 509	5874

7590 06/19/2002  
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Bayer Corporation  
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EXAMINER
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HINDI, OMAR Z

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 06/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/601,571

Applicant(s)

BERNETH ET AL.

Examiner

Omar Z. Hindi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Amendment B filed on 03-26-2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Action*.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, line 5, the phrase "spacing a" is not clear or understood. What does this limitation corresponds to?

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5-8, 10 and 11, are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al (4787716).

Kato discloses as in claim 1, Electrochromic display element containing an electrochromic medium between two electrode sheets (col.1 lines 21-29), where at least one of the electrode sheets is transparent and has a transparent electrically conductive layer (col.5 lines 1-9), characterized in that the transparent electrode sheet or sheets

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has/have a periodic or a periodic pattern of strips or grid' made of a material having metallic conductivity (col.3 lines 23-35).

Kato discloses as in claim 2, electrochromic display element characterized in that the electrochromic medium is a solution, a gel or a solid (col.4 lines 1-16).

Kato discloses as in claim 3, electrochromic display element characterized in that the electrochromic medium contains at least one pair of redox substances of which one is reducible and the other is oxidizable, where both are colourless or only slightly coloured and one substance is reduced and the other is oxidized on application of a voltage to the display element, with at least one becoming coloured, and after switching off the voltage the two original redox substances are formed again and the display element decolorizes, (col.1 lines 10-29).

Kato discloses as in claim 5, electrochromic display element characterized in that both electrode sheets have a periodic or aperiodic pattern of strips or grids made of a material having metallic conductivity (col.3 lines 23-35).

Kato discloses as in claim 6 and 7, electrochromic display element characterized in that the lines of the pattern of strips of the two electrodes form an angle with one another (col.5 lines 1-9).

Kato discloses as in claim 8, electrochromic display element characterized in that the periodicity of the pattern of strips or grid on at least one electrode is restricted to a very short distance, (fig.3a).

Kato discloses as in claim 10, electrochromic display element characterized in that the metal grid or pattern strips on the electrode or electrodes is deposited on the transparent, conductive layer (col.5 lines 1-9).

Kato discloses as in claim 11, Electrochromic display element characterized in that the transparent electrically conductive layer on the electrode or electrodes is deposited on the metal grid or pattern of strips, (col.5 lines 1-9).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al (4787716) in view of Kasai (4009936).

Kato discloses in the invention as described above however Kato does not teach the characteristics of the display element as in claim 4, Kasai however teaches in details of these characteristics. It would have been obvious to one skilled in the art at the time of the invention was made to show the characteristics of the display element for the purpose of displaying images.

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***Allowable Subject Matter***

7. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the claim(s), in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in claim(s) 12 and 13, wherein the claimed invention comprises pattern of strips of at least one electrode has a minimum mesh spacing of 3mm and optical density of 0.3, as claimed.

***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berneth et al (6404532), Gryko et al (6324091) and Byker et al (6288825) disclose electrochromic display device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Z. Hindi whose telephone number is (703) 305-6845. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (703) 308-4883. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7724 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Omar Z. Hindi  
Examiner  
Art Unit 2873

OH  
June 12, 2002



RICKY MACK  
PRIMARY EXAMINER